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100TH CONGRESS
1st Session

SENATE

REPORT
100-188

FEDERAL ONSHORE OIL AND GAS LEASING ACT OF 1987

SEPTEMBER 30 (legislative day, SEPTEMBER 25), 1987.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1730]

The Committee on Energy and Natural Resources, having considered the same, reports favorably an original bill, the Federal Onshore Oil and Gas Leasing Act of 1987, and recommends that the bill do pass.

PURPOSE OF THE MEASURE

S. 1730, as recommended by the Committee, would reform the procedures for Federal onshore oil and gas leasing. It would:

(1) eliminate the "known geological structure" ("KGS") determination as the basis for competitive leasing;

(2) require that all Federal onshore oil and gas leases initially and periodically be offered for sale by competitive bidding, with a national minimum acceptable price to be determined by the Secretary of the Interior of not less than $10 per acre;

(3) provide for periodic noncompetitive leasing by application of land not receiving the minimum bid;

(4) strengthen the Federal authority to stop certain unlawful practices with respect to mineral leasing engaged in by private parties.

BACKGROUND AND NEED

The Mineral Leasing Act of 1920 (30 U.S.C. 181, et seq.) (MLA) grants the Secretary of the Interior discretion to lease oil and gas deposits in Federal lands. Existing law provides that onshore oil and gas "within any known geological structure of a producing oil and gas field" ("KGS"), must be leased competitively to the highest

S263-26

bidder. Oil and gas on lands not within a KGS must be leased noncompetitively. Lands not within a KGS and never before leased and lands offered under the simultaneous oil and gas ("SIMO") leasing system which are not leased can be leased through application on a first-come, first-served basis, referred to as over-the-counter ("OTC"). Lands not within a KGS that have been leased previously are offered for lease under the SIMO leasing system, in which the lessee is randomly selected from a number of applicants participating in a lottery.

The vast majority of onshore oil and gas leases are awarded noncompetitively. At the end of fiscal year 1986, there were 96,308 oil and gas leases covering 90,038,346 acres, excluding Alaska. Of this total, approximately 92.5 percent, or 89,114 leases, are noncompetitive, with 30,371 of these being OTC leases and 58,743 of these being SIMO leases. Approximately 7.5 percent, or 7,194 leases, were issued competitively.

Historically, over 95 percent of all outstanding leases have been issued on a noncompetitive basis. Most noncompetitive leases are issued under the SIMO system. Most of the onshore oil and gas discoveries have been made on leases issued noncompetitively.

For many years, the Federal onshore oil and gas leasing program has been criticized for: (1) failure to obtain fair market value for Federal oil and gas leases in some instances when inaccurate or very restrictive KGS designations allowed some valuable lands to be leased noncompetitively; and (2) speculation by third parties that engaged in fraudulent activities.

Under the current system, the Department of the Interior ("DOI") identifies KGS's based on geological data and the location of producing wells. Since lands must be within a KGS before they can be leased competitively, some leases on lands not within a KGS have been issued on a non-competitive basis despite a high degree of competitive interest. These circumstances have led to the criticism that the Federal Government is not receiving fair market value for potentially valuable deposits.

For example, in 1979, DOI awarded noncompetitively (for $1 per acre) oil and gas leases on 33,000 acres within the Fort Chaffee Military Reservation in Arkansas. The lands, not previously opened to oil and gas leasing, were not designated as within a KGS, even though areas surrounding Fort Chaffee were highly productive. The U.S. District Court for the Western District of Arkansas, in *Arkla Exploration Co.* v. *Watt,* 562 F. Supp. 1214 (W.D. Ark. 1983), *aff'd sub nom. Arkla Exploration Co.* v. *Texas Oil and Gas Corp.,* 734 F.2d 347 (8th Cir. 1984), *cert. denied,* 469 U.S. 1158 (1985), ruled that DOI had improperly drawn the KGS boundaries and invalidated the leases. In 1980, 24,000 acres of adjoining land were competitively leased for $1,705 per acre. Instead of the Treasury receiving $24,000, one-half of which would be paid to the State, the Treasury received $43 million, and $21.5 million was paid to the State.

In another situation demonstrating the problems under the current system, several tracts of land in the Amos Draw area of northeast Wyoming, located adjacent to producing lands, were leased inadvertently by DOI noncompetitively through the lottery. The Government collected only $13,000 in rental fees and $1.2 million in

lottery applications for the tracts. It was reported that lease winners immediately resold the leases for fees estimated at $50 million to $100 million.

The current SIMO lottery system also has been criticized for encouraging speculation and fraud by third parties. Certain companies have engaged in misrepresenting to the public the chance of winning leases, the value of the leases, and the likelihood of industry interest in buying leases from members of the public should they win leases in the lottery. Administrative remedies imposed by DOI, such as raising the filing fee to $75 and requiring advance rental payments, have reduced but not eliminated fraudulent and speculative activities.

Current law requires that competitive leases must be 640 acres or less in size, have a royalty of not less than 12½ percent, and run for a term of 5 years (except for competitive leases issued in special tar sand areas) and so long thereafter as oil and gas is produced in paying quantities. A 2-year extension can be granted for certain leases. The statutory annual rental is a minimum of $.50 per acre, with a $2 per acre rental charge imposed by regulation.

Noncompetitive leases must have a royalty of 12½ percent, run for a term of 10 years (though a 2-year extension can be granted for certain leases), and carry a minimum of $.50 per acre annual rental charge. The current annual rental, set by regulation, is $1 per acre for leases issued over-the-counter, and $1 per acre for the first 5 years increasing to $3 per acre thereafter for leases issued under the SIMO system. By regulation, maximum lease size for leases issued noncompetitively is 10,240 acres.

Legislative History

Legislation similar to the reported measure to reform the Federal onshore oil and gas program has been introduced in several previous Congresses. S. 1637 was introduced in the 96th Congress and, as amended, was reported favorably by the Committee on Energy and Natural Resources. Legislation was also introduced in the 97th and 98th Congresses, but was not acted upon by the Committee.

In the 99th Congress, Senator Bumpers introduced S. 373 on January 31, 1985. S. 2439 subsequently was introduced by Senator Bumpers on May 13, 1986. On July 30, 1986, the Committee ordered that S. 2439 as amended be reported favorably to the Senate.

In the closing days of the session, a modified version of S. 2439 was passed by the Senate twice but was not acted on by the House of Representatives prior to adjournment of the 99th Congress.

S. 66 was introduced January 6, 1987, by Senator Bumpers, and S. 1388 was introduced by Senator Melcher June 18, 1987.

Hearings were held on both bills on June 30, 1987. The Committee on Energy and Natural Resources considered legislation to reform the onshore oil and gas leasing program at a Business Meeting on July 29, 1987 and ordered the Committee approved language reported to the Senate Committee on the Budget and to the Senate as an original measure. Additionally, the Committee on Energy and Natural Resources on September 23, 1987, ordered the same language reported to the Senate Committee on the Budget as part of its Reconciliation package by a vote of 18–0.

Committee Recommendation and Tabulation of Votes

The Senate committee on Energy and Natural Resources, in an open business session on July 29, 1987, by a unanimous vote of a quorum present, recommends that the Senate pass S. 1730.

The rollcall vote on reporting the measure to the Senate was 19 yeas 0 nays as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Metzenbaum	
Mr. Melcher*	
Mr. Bradley	
Mr. Bingaman*	
Mr. Wirth	
Mr. Fowler	
Mr. Conrad	
Mr. McClure	
Mr. Hatfield	
Mr. Weicker*	
Mr. Domenici*	
Mr. Wallop*	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Evans	

* Indicates vote by proxy.

Section-by-Section Analysis

Section 1 states the short title.

Subsection 2(a) amends paragraph 17(b)(1) of the Act of February 25, 1920 to direct the Secretary of the Interior to lease lands to be leased to the highest responsible qualified bidder by competitive bidding as long as the highest bid equals or exceeds a national minimum acceptable price established by the Secretary which is at least $10 per acre. This section specifically directs that no evaluation of the value of the lands shall be conducted. Lease sales shall be held for each state where eligible lands are available at least every two months.

Lands for which no bids are received or for which the highest bid is less than the minimum acceptable price shall promptly be offered within 30 days for leasing without competitive bidding and shall remain available for leasing without competitive bidding for a period set by the Secretary not to exceed three years after the competitive lease sale. The remaining provisions of the subsection are self-explanatory.

Subsection 2(b) amends subsection 17(c) of the Act of February 25, 1920 to provide if lands to be leased are not leased by competitive sale under paragraph 17(b)(1) or are not subject to competitive leasing under paragraph 17(b)(2), the first qualified applicant shall be entitled to a lease of such lands without competitive bidding. Lands to be leased under this provision are to be made available at

least every two months. Leases shall be issued within 60 days of the date on which the Secretary identifies the first qualified applicant. It is the Committee's intent that where there is substantial activity or interest in particular lands, the Secretary of the Interior will determine an orderly means of prioritizing applicants.

Subsection 2(c) amends Section 17(c) of the Act of February 25, 1920, to provide that lands posted for sale under paragraph (b)(1) for which no bids were received or for which the highest bid was less than the minimum acceptable price and for which at the end of the period prescribed by the Secretary under paragraph (b)(1) no lease has been issued and no lease application is pending under paragraph (c)(1) shall again be available for leasing only in accordance with paragraph (b)(1).

Land in any lease, including leases existing on the date of enactment, which lease terminates, expires, is canceled, or is relinquished shall again be available for leasing in accordance with paragraph (b)(1).

Section 2(d) amends subsection 17(d) of the Act of February 25, 1920 to provide that all leases to be issued shall be conditioned upon payment of a rental of not less than $1 per acre for each year payable in advance. It is the view of the Committee that the Secretary should consider raising the rental to $1.25 per acre for those leases for which rental is currently $1 per acre. The section requires payment of a minimum royalty of not less than $1 per acre in lieu of rental payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities, except that no minimum royalty shall exceed the rental rate that would have applied before discovery.

Subsection 2(e) amends subsection 17(e) of the Act of February 25, 1920 to provide that in addition to the authority granted to the Secretary under section 39 of the Act of February 25, 1920, the Secretary is authorized to suspend a lease under circumstances specified in the provision, and if such suspensions occur, the term of such lease shall be extended by adding any such suspension period thereto.

Section 3 amends section 30(a) of the Act of February 25, 1920 to allow the Secretary to disapprove assignments of a separate zone or deposit under any lease, of a part of a legal subdivision, or of less than 640 acres outside Alaska or of less than 2,560 acres within Alaska, unless the assignment constitutes the entire lease or is demonstrated to further development of oil and gas. The Secretary is directed to promptly process requests for assignment or sublease. Except where the assignment or sublease is not in accordance with applicable law, approval shall be given within 60 days of the date of receipt of the request for approval.

Section 4 amends subsection 31(b) of the Act of February 25, 1920 to provide that any lease issued under the Act shall be subject to cancellation by the Secretary after 30 days notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the leasehold contains a well capable of production of oil or gas in paying quantities, or the lease is committed to an approved cooperative or unit plan or communitization agreement which contains a well capable of production of unitized substances in paying quantities. This amendment is necessary to conform the

lease cancellation provisions to the changes being made in the leasing provisions.

Section 5 adds a new section 43 to the Act of February 25, 1920, to provide that actions taken by the Secretary to develop regulations and procedures for a competitive oil and gas leasing program or to hold particular lease sales are not subject to the requirements of Section 102(2)(C) of the National Environmental Policy Act (NEPA). The section does not otherwise affect the applicability of NEPA. Thus, lease issuance will continue to be subject to NEPA.

Section 6 amends the Alaska National Interest Lands Conservation Act to make certain leasing in Alaska consistent with that of the lower 48 States. Specifically, the favorable petroleum geological province (FPGP) is eliminated and replaced with the provisions of section 2.

Subsection 7(a) is a "grandfather" provision for noncompetitive applications and offers and competitive bids pending on the date of enactment of the Federal Onshore Competitive Oil and Gas Leasing Act of 1987. Subsection 7(b) provides for a competitive bidding test for certain specified lands. Subsection 7(c) provides that except as provided in subsections (a) and (b), all oil and gas leasing after the date of enactment is to be conducted in accordance with the provisions of the Federal Onshore Competitive Oil and Gas Leasing Act of 1987.

Subsection 8(a) provides that lands available for noncompetitive leasing on the day prior to enactment and not subject to the exclusions set forth in subsection (b) shall remain available for leasing without competitive bidding by the first qualfiied applicant. Subsection 8(b) sets forth lands to which the section does not apply. The Secretary is to publish a list of certain of these excluded lands within 60 days of enactment. Subsection 8(c) provides that authority to issue leases as provided in the section expires twenty-four months after the issuance of final regulations implementing the Competitive Oil and Gas Leasing Act of 1987. Subsection 8(d) provides that leases issued pursuant to this section are to be subject to the provisions of the Act of February 25, 1920, as amended by the Federal Onshore Competitive Oil and Gas Leasing Act of 1987.

Subsection 9(a) requires the Secretary to issue final regulations implementing the Competitive Oil and Gas Leasing Act of 1987 within 60 days after the date of enactment. The remaining provisions of the section are self-explanatory.

Subsection 9(b) provides that the Secretary shall hold at least one competitive lease sale pursuant to section 2 prior to issuing implementing regulations. Sale procedures shall be established in the notice of sale. The sale shall include tracts which otherwise would have been posted for filing of simultaneous applications pursuant to 43 CFR Subpart 3112. The Secretary may also include tracts which otherwise would have been posted for competitive sale pursuant to 43 CFR Subpart 3120 and tracts which received over-the-counter offers pursuant to 43 CFR Subpart 3111 between July 1, 1987, and the date of enactment. The Secretary may hold additional sales if he considers it necessary prior to the issuance of final regulations. The remaining provisions of the subsection are self-explanatory.

Section 10 adds a new section 41 to the Act of February 25, 1920, which provides specific authority to combat certain unlawful practices.

Subsection 41(a) establishes that those who make certain misrepresentations to the public incur liability under the section. Subsection 41(b) establishes liability for organizing or participating in schemes, arrangements, plans, or agreements to circumvent the provisions of the Act or its implementing regulations.

Subsections 41(c) and 41(d) contain the penalty provisions. Subsection (c) provides that the Attorney General shall institute a civil action against any person who, given the nature of the intended recipient of the communication, knew or should have known he or she was violating subsection (a) or (b). Subsection (c) provides for a civil penalty of not more than $100,000 for each violation and other appropriate remedies such as a ban on participation in the leasing program.

Subsection 41(d) provides for criminal penalties for knowing and willful violations of not more than $500,000 for each violation and imprisonment for not more than five years of both.

Subsection 41(e) provides that when a corporation or other entity is subject to civil or criminal action under this section, any officer, employee or agent of such corporation or entity who authorized, ordered or carried out the proscribed activity shall be subject to the same action. Also, whenever an officer, employee, or agent of a corporation or other entity is subject to civil or criminal action under this section for activity on behalf of the corporation or entity, the corporation or entity is subject to the same action, unless the action was taken without the knowledge or consent of the corporation or entity.

Subsection 41(f) provides all remedies, penalties, fines, and imprisonment are both concurrent and cumulative, and are in addition to any other remedies provided by law.

Subsection 41(g) authorizes States to bring civil actions under subsection (c) in Federal court. A State is required to notify the United States of any enforcement action in order to facilitate coordination. The State retains all fines collected by that State, except where a joint action is brought by the Attorney General and the State, by more than one State, or by the Attorney General and more than one State, civil penalties recovered are to be shared by the parties bringing the action in accordance with a written agreement entered into prior to the filing of the action. Nothing in the Section is to deprive a State of jurisdiction to enforce its own criminal and civil laws. The remaining provisions of the subsection are self-explanatory.

Section 11 amends section 35 of the Act of February 25, 1920 by adding the requirement that in determining the amount of payments to States under section 35, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States.

Section 12 requires the Secretary to submit annually a report including certain specified information to facilitate Congressional monitoring.

Section 12 amends subsection 17(a) of the Act of February 25, 1920 to provide that the Secretary of the Interior may not issue

any oil and gas lease under the Act of February 25, 1920 on any lands administered by the Secretary of Agriculture through the Forest Service without consultation with the Secretary of Agriculture. The Committee is aware that this provision does not apply to lands leased under the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.). That Act requires the Secretary of Agriculture to consent to mineral leasing on lands covered by that Act which are administered by the Secretary of Agriculture.

Section 13 also amends subsection 17(a) of the Act of February 25, 1920 to require that the Secretary shall not issue a lease or leases or approve the assignment of any lease or leases under the terms of section 17 of the Act of February 25, 1920 to any person, association, corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation, where any such entity has failed to reclaim a lease tract as required by the terms and conditions of the lease.

Cost and Regulatory Considerations

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

September 28, 1987

Honorable J. Bennett Johnston, Jr.
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has reviewed the Federal Onshore Competitive Oil and Gas Leasing Act of 1987, as ordered reported by the Senate Committee on Energy and Natural Resources, July 29, 1987. We estimate that enactment of this bill by November 1987 would increase federal receipts, net of payments to states, by approximately $10 million in 1988, and by about $20 million per year over the fiscal years 1989 through 1992. Most of this increase would result from increases in bonus bid receipts as more leasing activity is shifted to the competitive process.

The bill would authorize the Secretary of the Interior to lease all federal onshore oil and gas resources, with some specific exceptions, initially through a competitive process, with minimum bids of at least $10 per acre, and leases of no more than 2,560 acres. With specific exemptions, lands currently leased through over the counter transactions would be exempt from competitive leasing for two years. Lands not leased competitively--those that fail to receive the minimum bid in a competitive sale--would be available for noncompetitive leasing for three years. After that time, they would again be available only through the competitive process. The bill would also set the royalty rate for competitive leases at a flat 12.5 percent and would set rentals at a minimum of $1 per acre. The Secretary of the Interior would be required to promulgate regulations implementing the provisions of this bill within 60 days of the bill's passage.

The bill would also give the Secretary of the Interior the discretion to disapprove assignments where the acreage involved is less than 640 acres outside Alaska or less than 2,560 acres within Alaska. The bill would establish civil and criminal penalties for knowingly and willfully misrepresenting to the public the provisions of the act and its implementing regulations. Finally, the bill would require an annual report to the Congress and would prohibit the Department of the Interior from reducing payments to states from mineral receipts by administrative costs.

Based on information from the Department of the Interior and upon an analysis of the results of the existing leasing system, CBO estimates that relative to current law, the competitive leasing system established by the bill would increase gross receipts from bonus bids

by approximately $32 million in fiscal year 1988 and by about $65 million per year over the fiscal years 1989 through 1992. Because the federal government is required to pay to states half of the receipts, the gain to the federal government, net of payments to states, would be about $16 million in 1988 and $32 million per year over the 1989-1992 period. Partially offsetting this increase, however, would be the loss of receipts to the federal government of approximately $6 million in 1987 and $12 million per year thereafter from filing fees for noncompetitive leases that would now be leased competitively. We assumed that all tracts not leased competitively under the bill would be leased noncompetitively as under current law; therefore, there would be no change in receipts from such leases. The net result of the shift to a two-tiered system would be an increase in offsetting receipts of about $10 million in 1988 and $20 million annually, thereafter.

CBO expects that receipts from leases that would have been issued competitively under current law would not be significantly affected by this bill. The budget impact of this bill is expected to result primarily from shifting a portion of the acreage leased each year from a noncompetitive leasing program, which presently accounts for about 95 percent of the onshore oil and gas leases, to a competitive system based on the bidding, rental, and royalty provisions established or modified by this bill.

The estimated increase in receipts depends on a number of very uncertain factors, including the number of acres that would be leased under a competitive system and the amounts of bonus bids that would be received. For the purposes of this estimate, CBO assumed that about 30 percent to 40 percent of the total acreage that would otherwise be leased noncompetitively through the simultaneous oil and gas (SOG) procedures each year would be leased competitively under the terms set forth in the bill. We assumed that the remainder of the acreage would not receive competitive bids and would still be leased noncompetitively. It was assumed that bonus bids would average $15 to $20 per acre.

The provisions prohibiting the Department of the Interior from reducing payments to states from mineral receipts by administrative costs would have no budget impact, because it reaffirms current law.

State and local governments would share 50 percent of the additional bonus bid receipts realized from enactment of this bill. CBO estimates that state receipts would consequently increase by approximately $16 billion in fiscal year 1988 and by about $32 million annually thereafter.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

James Blum

for Edward M. Gramlich
Acting Director

cc: Honorable James A. McClure
Ranking Minority Member

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in implementing S. 1730. The Act is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1730, as amended.

Executive Communications

The pertinent legislative reports and communications received by the Committee from the Office of Management and Budget and from the Department of the Interior setting forth Executive agency recommendations relating to legislation to reform the Federal onshore oil and gas leasing program are set forth below.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
MAY 14 1987
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MAY 1[illegible] 1987
WASHINGTON, D.C. 20510

Honorable J. Bennett Johnston
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for our views on S. 66, a bill "To amend the Act of February 25, 1920, to provide for competitive leasing of oil and gas for onshore Federal lands, and for other purposes."

We support enactment of S. 66 but believe it would be improved by the adoption of the six amendments discussed herein.

S. 66 would be cited as the "Federal Onshore Competitive Oil and Gas Leasing Act of 1987." Section 2(a) of S. 66 would amend section 17(b)(1) of the Act of February 25, 1920 (the Mineral Leasing Act), to direct the Secretary of the Interior to lease all lands, including those in Alaska, to the highest responsible qualified bidder by competitive oral bidding in units of not more than 2,560 acres, except in Alaska, where units could not exceed 5,120 acres. Lease sales would be held for each State, where appropriate, not less than quarterly. A lease would be conditioned upon payment of a royalty of 12.5 percent in amount or value of the production removed or sold from the lease. The Secretary of the Interior would establish a minimum acceptable price which would be at least $20 per acre. The minimum acceptable price would be established without evaluation of the lands proposed for lease. Lands receiving no bids or bids less than the minimum acceptable price would become available for leasing to the person first making application within a period not to exceed one year, without competitive bidding. Following this period, if no lease has been issued and no lease application is pending, the lands would be available only by competitive bidding as previously described.

Section 2(b) of S. 66 would amend section 17(c) of the Mineral Leasing Act to state that if lands to be leased are not leased by competitive bidding or are not subject to competitive leasing under section 17(b)(2) of the Mineral Leasing Act (tar sands), the person first making application for the lease who is qualified would be entitled to such

lease without competitive bidding. Section 2(c) of S. 66 would provide that any lease issued under section 17(c)(1) or section 17(b)(1) (as it would be amended by S. 66) that terminates, expires, is cancelled or is relinquished would again be available for leasing only in accordance with section 17(b)(1). Section 2(d) of S. 66 would provide that a minimum royalty of not less than $1 per acre in lieu of rental would be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased.

Section 3 of S. 66 would allow the Secretary to disapprove an assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bonds. However, the Secretary could disapprove an assignment of a separate zone of deposit, of a part of a legal subdivision, or of less than 640 acres outside Alaska or of less than 2,560 acres in Alaska, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas.

Section 4 of S. 66 would amend section 3(b) of the Mineral Leasing Act to provide that any lease issued after August 21, 1935, under section 17 of the Mineral Leasing Act would be subject to cancellation by the Secretary of the Interior after 30 days notice upon the failure of the lessee to comply with any of the provisions of the lease unless the leasehold contains a well capable of production in paying quantities or the lease is committed to an approved cooperative or unit plan or communitization agreement which contains a well capable of production of unitized substances in paying quantities.

Section 5 of S. 66 would amend section 1008 of the Alaska National Interest Lands Conservation Act (ANILCA) to make leasing in Alaska consistent with that of other States. Subsections 1008(c) and (e) of ANILCA would be deleted in their entirety, and the second sentence of subsection (d) would be deleted, thereby eliminating "favorable petroleum geological provinces" in Alaska.

Section 6 of S. 66 contains "grandfather" provisions for lease applications pending at the time S. 66 is enacted. All noncompetitive lease applications filed under the simultaneous oil and gas leasing system and pending on the date of enactment would be processed and leases would be issued under the Mineral Leasing Act as in effect before its amendment by S. 66. If the date of enactment occurred during a simultaneous filing period, applications filed during that period would be considered filed prior to the date of enactment of S. 66. All noncompetitive lease offers filed under the over-the-counter leasing system prior to

January 1, 1987, would be processed and leases issued under the Mineral Leasing Act as in effect before its amendment by S. 66. If the Secretary posts for competitive sale tracts containing lands in an over-the-counter noncompetitive lease offer filed between January 1, 1987, and the date of enactment of S. 66, and if any such tracts do not receive bids greater than or equal to the minimum acceptable price established by the Secretary at the sale, the Secretary would be required to reinstate the noncompetitive lease offers for the tracts and to issue leases in accordance with section 17(c) of the Mineral Leasing Act. All competitive bids pending on the date of enactment of S. 66 would be processed, the high bid for each tract accepted without further evaluation of the value of the tract and leases issued under the Mineral Leasing Act as in effect before its amendment by S. 66. No noncompetitive lease applications or offers pending on the date of enactment of S. 66 for lands within the Shawnee National Forest, Illinois; the Ouachita National Forest, Arkansas; Fort Chaffee, Arkansas; or Eglin Air Force Base, Florida, would be processed until the lands are posted for competitive bidding in accordance with section 2 of S. 66. If a tract receives no bid from a qualified bidder, then the noncompetitive applications or offers pending for the tract would be reinstated and noncompetitive leases would be issued under the Mineral Leasing Act as in effect before enactment of S. 66. If competitive leases are issued on the tract, the noncompetitive application or offer would be rejected.

Section 7 of S. 66 would direct the Secretary to issue final regulations within 180 days after the date of enactment of the bill. The Secretary would be further directed to hold at least one competitive lease sale pursuant to section 2 of S. 66 prior to issuing the required regulations. The sale would include tracts which, but for the enactment of S. 66, would have been posted for the filing of simultaneous lease applications. The Secretary could also include tracts which would otherwise have been posted for competitive sale and tracts which received over-the-counter noncompetitive lease offers between January 1, 1987, and the date of enactment of S. 66. If tracts which, before enactment of S. 66, would have been posted for the filing of simultaneous applications do not receive bids greater than or equal to the minimum acceptable price at a competitive sale, they would then be posted for the filing of simultaneous applications if the Secretary has not issued the regulations required in S. 66. If no competitive or noncompetitive leases are issued under section 7(c), the Secretary would have to lease the tracts in accordance with the regulations issued under section 7(b) of S. 66.

Section 8 of S. 66 would add a new section 43 to the Mineral Leasing Act. This section would provide that actions taken by the Secretary to develop regulations and procedures for a competitive leasing program or to hold lease sales would not be subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969. Nothing in the Mineral Leasing Act would be considered as affecting the application of section 102 of the National Environmental Policy Act of 1969 except as provided in section 8 of S. 66.

Section 9 of S. 66 would amend the Mineral Leasing Act by inserting after section 40 a new section 41. The new section 41 would make a person liable for making misrepresentations to the public by any means of communications concerning values of leases and lands, the availability of land or the ability of the person to obtain leases under the Mineral Leasing Act. Any person participating in any scheme to circumvent the Mineral Leasing Act also would be liable. The Attorney General would be required to institute a civil action against a person who knew or should have known he or she was violating the misrepresentation or circumvention prohibitions previously mentioned. The civil penalty would be up to $100,000 for each violation or other appropriate penalty, including but not limited to, a prohibition from participation in exploration, leasing, or development of any Federal mineral, or both. A person who knowingly and willfully violated the prohibitions could be punished by a fine of not more than $500,000 for each violation or by imprisonment of not more than five years, or both. If a corporation is held liable, officers, and employees or agents of the corporation could be subject to the penalties. If an officer, employee, or agent of a corporation is found liable for activity conducted on behalf of the corporation, the corporation could be subject to the penalties. A State could institute civil actions against any person conducting activities in violation of section 9 of S. 66. Any civil penalties recovered by a State would be retained by the State. Joint actions with other States or the Attorney General would be shared by the parties bringing the action in accordance with a written agreement entered into prior to the filing of the action. A State would still be allowed to enforce its own civil and criminal laws against any person who could also be subject to actions under the Mineral Leasing Act.

There appears to be an error on page 13 of S. 66. A second section 9 appears. This section would direct that in determining the amount of payments to States under section 35 of the Mineral Leasing Act, such payments would not be reduced by any administrative or other costs incurred by the United States.

Section 10 of S. 66 would require the Secretary to submit an annual report to the Congress containing appropriate information on the implementation of S. 66. Such information would include: the number of acres leased and the number of leases issued; revenue received from bonus bids, rentals, and royalties; amount of production from competitive leases after enactment of S. 66 and from competitive and noncompetitive leases issued prior to enactment of S. 66; and information to facilitate an assessment of the oil and gas leasing system as well as a comparison of the system as revised by S. 66 with the system in operation prior to enactment of S. 66.

S. 66 would make four major changes in Federal onshore oil and gas leasing:

1) It would subject all onshore Federal lands (including those in Alaska) to competitive leasing for oil and gas. However, following the availability for competitive bidding, if lands do not receive a bonus bid at or above the per-acre level set by the Secretary, those lands would become available for noncompetitive leasing.

2) It would set the royalty rate at a flat 12-1/2 percent for all leases.

3) It would give the Secretary of the Interior the discretion to disapprove assignments where the acreage involved is less than 640 acres outside of Alaska or 2,560 acres within Alaska.

4) It would establish civil and criminal penalties for misrepresentations to the public concerning oil and gas leasing.

The goals of a forward-thinking leasing program are met by S. 66. The bill encourages exploration and development, ensures an adequate return to the public, and can be administered at low cost. At a time when the future of the domestic oil and gas industry is uncertain, this bill will strengthen our domestic petroleum capability by bringing stability and predictability to the Federal onshore oil and gas leasing program.

We believe S. 66 represents a fair and workable solution to the problems facing the Federal onshore oil and gas leasing program. A major continuing issue is how to determine which lands should be leased competitively and which should not. Another issue is the Department's ability to perform Known Geologic Structure (KGS) determinations, which will always be questioned no matter how qualified our personnel are or

the size of the budget dedicated to it. We know of no better way of identifying which Federal lands are of sufficient value to generate competition than going to the marketplace. Nevertheless, we believe the basic purpose of noncompetitive leasing, to encourage exploration at low cost, is still valid. We, therefore, endorse the concept of using a market-based price test to establish when there shall be competitive and when noncompetitive leasing.

In a leasing program in which all lands are subject to competition, the amount of money which may be bid for a lease depends upon the potential cost of operating and maintaining that lease. Thus, the flat, low royalty rate provided in S. 66 may increase the amount available to bid. In addition, it would provide the lessee with certainty as to possible future royalty costs.

Another major issue is the potential for the fraudulent abuse of this system. We believe the provisions of S. 66 greatly diminish the likelihood of fraud. The use of a minimum bid places a ceiling upon the value of tracts available for noncompetitive leasing. As a result, the incentive for casual speculation by the general public to participate in noncompetitive leasing will be considerably lessened. Further, the authority given to the Secretary to disapprove small acreage assignments will decrease the practice by which large parcels are broken up and sold to the unsuspecting public. Finally, explicitly stated civil and criminal penalties will facilitate prosecution of those who would misrepresent this program by the agencies best suited for this purpose as well as providing incentives for prosecution by State governments.

Our specific comments on S. 66 follow:

Section 2 would direct the Secretary of the Interior to lease all lands (including Alaska) to the highest responsible, qualified bidder by oral bidding, as long as the highest bid equals or exceeds a bid price set by the Secretary, which is at least $20 per acre. This section would specifically direct that no tract evaluations shall be conducted in establishing the minimum price set by the Secretary. We presume that this provision taken with the following sentence in section 2 of the bill directing that the Secretary accept the highest bid from a responsible qualified bidder equal to or greater than the minimum acceptable price means that no tract evaluation be conducted to determine the adequacy of the highest bid. However, we recommend that this point be made explicit in bill language.

It is our understanding that there will be one bid price set by the Secretary and that it will apply across the board to all lands to be leased. We expect that the bid price set by the Secretary will not be based on any specific geology but rather will be reflective of overall oil and gas market conditions. We expect that this bid price will be adjusted to reflect major changes in the oil and gas market but that this will not occur often. In any event, the adequacy of bids will not be considered as long as the bids are equal to or greater than the price set by the Secretary and such bids should be accepted without further evaluation.

Section 2 also would provide that all lands receiving no bid or bids below the per-acre bid price set by the Secretary would be rejected and leased without competitive bidding to the person first making application within a period not to exceed one year. Following this period set by the Secretary, any lands again available for leasing would be leased to the highest responsible, qualified bidder by competitive bidding as described above. Currently, only those lands located within a "known geologic structure of a producing oil or gas field" are required to be leased under competitive bidding procedures. All other lands, regardless of perceived value, must be leased noncompetitively to the first qualified applicant.

Section 2 of S. 66 would eliminate the use of KGS as the competitive-noncompetitive arbiter and would replace it with a market-value criterion. No change is made in the Secretary's discretionary authority to establish reasonable procedures for determining the first qualified applicant. However, the minimum-price-per-acre criterion does establish the fact that lands leased noncompetitively are worth less than that minimum.

Section 2 could be improved by increasing the one-year period within which a person could apply for a lease on lands receiving no bids or bids below the per-acre bid price. We believe a three-year period is appropriate. This would ease the administrative burden in recycling such tracts.

Section 2 would also direct that leases should contain no more than 2,560 acres outside Alaska and no more than 5,120 acres in Alaska. Currently, competitively leased tracts in the lower 48 States and Alaska are limited to a statutory maximum of 640 acres and 2,560 acres, respectively. Noncompetitive leases are limited to a regulatory maximum of 10,240 acres in all States. Most leases are between 1,000 and 1,500 acres. Section 2 would eliminate the need to

reduce the size of most relinquished, canceled, terminated, or expired noncompetitive leases before reoffering them competitively.

Section 2 would require that lease sales be held quarterly. We believe that it will take the Department 90 days to complete the competitive-noncompetitive leasing cycle mandated by this Act. Section 2 also requires that all leases have royalty rates of 12-1/2 percent. Currently, competitive leases have sliding-scale royalties varying between 12-1/2 and 25 percent depending upon production. Noncompetitive leases have a fixed 12-1/2 percent royalty rate. The change provided by S. 66 would make the two forms of leasing consistent and would eliminate the uncertainty in competitive bidding resulting from the sliding scale.

Finally, section 2 would provide for a minimum royalty of "not less than" $1 per acre. The change in the minimum royalty language eliminates the possibility of the minimum royalty being less than the rental rate on a lease.

We favor section 2 subject to the changes noted.

Section 3 would allow the Secretary to disapprove assignments if they involve a separate zone or deposit, a part of a legal subdivision, or are less than 640 acres outside Alaska, or less than 2,560 acres in Alaska. It would also require that assignments shall be processed promptly. Section 3 would also refer to subleases. This section is aimed at preventing the "40 acre" merchant from leasing large tracts of land and then breaking that lease into many small parts which can be marketed to an unsuspecting public. We favor this amendment but recommend that references to subleases be deleted inasmuch as such agreements usually involve the Government as a third party and little, if any, public purpose is served through approval of operating rights' assignments associated with subleases.

Section 4 would provide for the cancellation of any lease by the Secretary unless the lease contains a well capable of production or is part of a unit plan or communitization agreement. Currently, only lands in a KGS are not subject to Secretarial cancellation. Since section 2 removes the KGS classification, the cancellation provisions are modified by this section to be consistent. We favor this section.

Section 5 would amend the Alaska National Interest Lands Conservation Act to make leasing in Alaska more consistent with that of the other States. The concept of a favorable producing geological province would be eliminated and replaced with the provisions of section 2. This would not

affect in any way the current leasing program in the National Petroleum Reserve-Alaska (43 U.S.C. 6508) nor would it have any effect on the Alaska National Wildlife Refuge (16 U.S.C. 3141). We favor this provision which would make Federal leasing more consistent.

Section 6 would provide "grandfather" provisions for lease applications pending at the time S. 66 is enacted. Subsection (a) would grandfather pending simultaneous, noncompetitive applications and provide an orderly transition if the Department is conducting a simultaneous filing at the time S. 66 is enacted. Subsection (b) would grandfather over-the-counter noncompetitive applications filed prior to January 1, 1987. Subsection (d) would grandfather pending noncompetitive applications in certain controversial areas only if the lands are not leased competitively under section 2. We believe current applications and offers should be grandfathered. The January 1 date would prevent a "land rush" of over-the-counter offers prior to enactment of S. 66.

In addition to lease applications being grandfathered, we believe that lands which are currently available for noncompetitive leasing but which have attracted no leasing interest should remain available for leasing under section 17(c) of the Mineral Leasing Act until January 1, 1991. In order to define the category of lands in which there is no leasing interest, we have first excluded lands which were subject to a lease or lease application on January 1, 1987. This will enable the Bureau of Land Management (BLM) to identify lands with no leasing interest by posting for simultaneous filings all lands covered by a lease which had terminated, expired or been canceled prior to that date and receiving no applications. If land is managed by another agency such as the United States Forest Service, BLM refers previously leased land to that agency for review before posting it for simultaneous filings. We would exclude land which has been referred but no response received. This will avoid the possibility that lands with leasing interest have no pending application only because they are under review by a surface managing agency other than BLM. Finally, we would exclude all land under study for inclusion in a KGS, or, in Alaska, in a favorable petroleum geological province, and all land in Arkansas.

The following language, if included in the bill, would accomplish this:

> Sec. 11. The Act of February 25, 1920 (30 U.S.C. 181 et seq.), is amended by inserting after section 17 the following new section 17A (30 U.S.C. 226-3):

Sec. 17A. (a). Lands to be leased which were available for noncompetitive oil and gas leasing pursuant to section 17(c) of this Act on the day prior to the enactment of the Federal Onshore Competitive Oil and Gas Leasing Act of 1987 and which are not subject to the exclusions set out in paragraph (b) of this section shall be leased without competitive bidding to the person first making application for the lease who is qualified to hold a lease under this Act.

(b) This section shall not apply to the following lands:

(1) lands covered by an oil and gas lease on January 1, 1987;

(2) lands for which a lease application or offer was pending on the date of enactment of the Federal Onshore Competitive Oil and Gas Leasing Act of 1987;

(3) lands in a known geological structure of a producing oil or gas field or, in Alaska, within a favorable petroleum geological province;

(4) lands under study on the date of enactment of the Federal Onshore Competitive Oil and Gas Leasing Act of 1987 for inclusion in a known geological structure of a producing oil and gas field or, in Alaska, for inclusion in a favorable petroleum geological province;

(5) lands which were referred to a surface managing agency (other than the Bureau of Land Management) for a recommendation or consent regarding leasing and which had not been made available for leasing prior to the enactment of the Federal Onshore Competitive Oil and Gas Leasing Act; and

(6) land in the State of Arkansas.

The Secretary of the Interior shall publish in the Federal Register within 270 days a list of lands subject to paragraphs (4) and (5) of this subsection.

(c) The authority to issue leases as provided in this section shall expire on January 7, 1991, except for those applications of offers for leases which are filed pursuant to this section and which are pending on January 1, 1991.

(d) Oil and gas leases issued pursuant to this section shall be subject to the same provisions of this Act, including royalty, as oil and gas leases issued pursuant to section 17(c) of this Act.

The above provision gives the oil industry adequate time to adjust to the new leasing system. It would encourage companies to continue their wildcat efforts on lands where there is no current interest. The proposal should not alter the basic change contemplated by S. 66 since the lands affected by our proposal are not expected to attract a minimum bid.

Section 7 would require issuance of regulations within 180 days of enactment of S. 66 and would require the Secretary to hold at least one lease sale under the provisions of this Act without having issued regulations. In order to meet the 180-day requirement for issuing final regulations, several steps in the regulatory process would have to be shortened or eliminated. The time limit should be changed to 270 days because 180 days is not sufficient time within which to issue regulations. The requirement to hold at least one lease sale prior to issuance of the regulations may be too rigid. We believe that until new regulations are in place, the Secretary should have discretion to either maintain the status quo leasing system based on KGS' or have a sale under the system envisioned by S. 66, but the opportunity for leasing should not be stopped while regulations are prepared.

Section 8 would provide that actions taken as a result of S. 66 for the purpose of developing regulations and procedures for a competitive oil and gas leasing program, or to hold particular lease sales, are not "major Federal actions" under sections 102(2)(C) of the National Environmental Policy Act (NEPA). The decision to include particular lands in a lease parcel or subsequent phases of oil and gas development will continue to be subject to NEPA. Section 8 only obviates the need to write a programmatic environmental impact statement for the purpose of developing regulations and procedures for a competitive oil and gas leasing program, and for holding particular lease sales.

Congress has provided statutory guidance for addressing environmental considerations associated with onshore oil and gas leasing. These statutes require substantial public participation in this process. We believe they give sufficient authority to deal administratively with environmental concerns relative to onshore oil and gas leasing. We do not believe these statutes need further amendment at this time nor is it desirable to do so in the context of legislation dealing with the methodology of leasing. We strongly oppose efforts to add to S. 66 any such environmental amendments.

Section 9 of S. 66 would provide criminal as well as civil penalties against persons and/or corporations who misrepresent values of leases or lands or the ability to obtain leases. We strongly support section 9.

The section immediately following section 9 in S. 66 is also identified as section 9. As a technical matter, the sections should be renumbered at this point, with each section renumbered one number higher.

We believe the second section 9, as it appears on page 13 of S. 66, should be deleted. S. 66 would not allow any payments to the States under section 35 of the Mineral Leasing Act to be reduced by any administrative or other costs incurred by the United States. We strongly support a more equitable distribution of mineral receipts, recognizing the expenses incurred by the Federal Government in managing minerals on Federal lands. We believe the Federal Government should be reimbursed for the costs it incurs in managing Federal minerals, before making distribution of the receipts, thereby assuring more equitable sharing of the burdens as well as the benefits of administering Federal minerals.

Section 10 of S. 66 would require the Secretary to submit an annual report to Congress dealing with onshore oil and gas leasing. We believe that the requirement for submission of such a report within one year does not allow sufficient time to prepare a quality report. A single report prepared and submitted within three years of enactment of S. 66 would be preferable. The report should be limited to:

(1) The number of acres leased and the number of leases issued;

(2) The amount of revenue received from bonus bids, rentals and royalties; and

(3) The amount of production before and after enactment of S. 66.

We also believe that the report should be prepared once, not annually. Most of the information is available in the Public Land Statistics and Royalties: A Report of Federal and Indian Mineral Reserves. We see no need to add another annual report to the many we prepare every year when much of the information is readily available. In addition, the Department is always willing to respond at any time to congressional requests for additional information relative to the operation of our onshore oil and gas leasing system.

Finally, we recommend that S. 66 be amended to add a provision relating to interests in lands which will vest in the Federal Government at some future time.

Beginning in the 1930's, the United States obtained lands under statutes such as the Bankhead-Jones Act and the Weeks Act. In many cases, the Federal Government acquired the surface outright but acquired only a future interest in the minerals. Until the vesting of the minerals in the United States--anywhere from 25 to 50 years after acquisition--the grantees of these lands had the fee ownership of the minerals, including the right to lease and develop them. Because centralized records were not kept of these conveyances, we do not know how many contain the future Federal mineral interest. We do know that there are cases where the current owners of these interests have leased them to third parties.

Under current law and regulation, a lease on a future interest that is not located in a KGS may be issued directly to the current owner of mineral rights either as an operator holding such rights or as mineral fee owner. However, future interest leases for lands which are located in a KGS must, under current statute, be leased under a competitive bidding system. Therefore, it is possible that the current owner or operator may lose his present rights or, at the least, have to pay for the mineral interest again. The possibility also exists for interrupted production if the current owner/operator loses his mineral interest.

We suggest that language be adopted to allow the Secretary to issue a lease without competitive bidding to any person who is operating a producing well at the time of lease issuance and, under assurance satisfactory to the Secretary, will continue to be operating the producing well at the time the future interest vests in the United States. The proposed amendment would be in the interest of equity to the current owner/operator and would assure continuation of production.

We suggest the following language be proposed.

"Sec. 11. Section 5 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 354) is amended by deleting the period at the end thereof and adding:

> "Provided, That notwithstanding the provisions of section 3 of this Act, the Secretary may issue a lease without competitive bidding to any person who is operating a producing mine or well on the land at the time of lease issuance and, under assurance satisfactory to the Secretary, will continue to be operating the producing mine or well at the time the future interest vests in the United States.".

In summary, we support S. 66 with the improvements noted and strongly urge congressional action on it.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. Steven Griles

ASSISTANT SECRETARY J.Steven Griles

STATEMENT OF ROBERT F. BURFORD, DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE ON S. 66, A BILL "TO PROVIDE FOR COMPETITIVE LEASING FOR ONSHORE OIL AND GAS" AND S. 1388, A BILL "TO AMEND THE ACT OF FEBRUARY 25, 1920, TO REFORM FEDERAL ONSHORE OIL AND GAS LEASING PROCEDURES".

I appreciate the opportunity to appear here today to discuss S. 66 and S. 1388, bills that would amend provisions of the Mineral Leasing Act of 1920 dealing with the leasing of onshore Federal lands for oil and gas.

Before I discuss the bills being considered today, I will comment briefly on the state of the oil and gas industry in the United States today.

Oil and gas exploration is deeply depressed, and any changes to the Mineral Leasing Act must be weighed against potential adverse impacts on the industry. According to a recent Hughes Tool Company report only 763 drilling rigs are currently active. In comparative terms, there are less rotary rigs active now than the World War II low of 805. The monthly seismic crew count, with only 166 crews working in May 1987, is at its lowest level since 1970.

Further, 1986 exploration and development outlays are estimated to have been one-half of the 1985 level of $30 billion. It is estimated that in 1986 only 39,400 wells were drilled. Finally, one need only pick up the Denver Post or other western newspapers to read distressing human interest stories of oil and gas companies that have gone bankrupt or people who have lost their jobs.

Not only has the sharp decline in oil prices reduced domestic exploration, but it is also threatening energy security. Oil imports averaged 5.9 million barrels in the first quarter of 1987, up 31 percent from the comparable period in 1985. Our reliance on foreign oil imports rose to 37 percent in mid-May of 1987 from 27 percent in 1985.

In light of this situation, the President issued a statement in June 1986 which emphasized his intent to maintain our national energy security and ensure that the U.S. does not become unduly dependent upon unreliable sources of oil. In his statement, the President directed the Secretary of the Interior to allow economically marginal Federal oil and gas leases to suspend production requirements if the wells would otherwise be prematurely abandoned. This followed a similar action taken by the Secretary on April 17, 1986, for stripper wells — those wells producing 10 or less barrels of oil a day. The suspensions allow lessees to keep their leases and to resume production in the future. These and other actions being taken by the Administration demonstrate our commitment to helping maintain a viable domestic oil and gas industry. In fact, since prices fell to $10 per barrel in 1986 they have recovered to about $18 per barrel which may provide an incentive for some increased domestic exploration.

Although over four million wells have already been drilled in the United States, less than 2.5 percent of that number have been drilled on Federal lands. Wells from Federal onshore oil and gas leases produce about 5 percent of the Nation's oil and gas.

It is within this context that any changes to the Mineral Leasing Act must be considered.

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S. 66 would make four major changes in Federal onshore oil and gas leasing:

1) It would subject all onshore Federal lands (including those in Alaska) to competitive leasing for oil and gas. However, following the availability for competitive bidding, if lands do not receive a bonus bid at or above the per-acre level set by the Secretary, those lands would become available for noncompetitive leasing.

2) It would set the royalty rate at a flat 12-1/2 percent for all leases.

3) It would give the Secretary of the Interior the discretion to disapprove assignments where the acreage involved is less than 640 acres outside of Alaska or 2,560 acres within Alaska.

4) It would establish civil and criminal penalties for misrepresentations to the public concerning oil and gas leasing.

The goals of a forward-thinking leasing program are met by S. 66. The bill encourages exploration and development, ensures an adequate return to the public, and can be administered at low cost. At a time when the future of the

public, and can be administered at low cost. At a time when the future of the domestic oil and gas industry is uncertain, enactment of this bill would strengthen our domestic petroleum capability by bringing stability and predictability to the Federal onshore oil and gas leasing program.

We believe S. 66 represents a fair and workable solution to the problems facing the Federal onshore oil and gas leasing program. A major issue that we face continually is how to determine which lands should be leased competitively and which should not. Tied in with this is the issue of the Department's ability to perform Known Geologic Structure (KGS) determinations. Those determinations will always be questioned no matter how qualified our personnel are or the size of the budget dedicated to making those determinations. We know of no better way of identifying which Federal lands are of sufficient value to generate competition than going to the marketplace. At the same time, we believe the basic purpose of noncompetitive leasing -- to encourage exploration at low cost -- is still valid. We, therefore, endorse the concept reflected in S. 66 of using a market-based price test to establish when there shall be competitive and when noncompetitive leasing.

In a leasing program in which all lands are subject to competition, the amount of money which may be bid for a lease depends upon the potential cost of operating and maintaining that lease. Thus, the flat, low royalty rate provided in S. 66 may increase the amount of money available for bidding as compared to maintaining a variable rate royalty. In addition, it would provide the lessee with greater certainty as to possible future royalty costs.

Another major issue is the potential for fraudulent abuse of the system. While any system can be abused by "clever" people, we believe the provisions of S. 66 greatly diminish the likelihood of fraud. The use of a $20 per acre minimum bid not only places a ceiling upon the value of tracts available for noncompetitive leasing it also makes it relatively expensive to amass large acreages for sale to the general public. Consequently, the incentive for casual speculation by the general public to participate in both competitive and noncompetitive leasing will be considerably lessened. Further, the authority given to the Secretary to disapprove small acreage assignments will decrease the practice by which large parcels are broken up and sold to the unsuspecting public. Finally, explicitly stated civil and criminal penalties will facilitate prosecution of those who would misrepresent the program by the agencies best suited for this purpose as well as providing incentives for prosecution by State governments.

I offer these specific comments on S. 66.

Section 2 would direct the Secretary of the Interior to lease all lands, including Alaska, to the highest responsible, qualified bidder by oral bidding, as long as the highest bid equals or exceeds a bid price set by the Secretary, which is at least $20 per acre. This section would specifically direct that no tract evaluations shall be conducted in establishing the minimum price set by the Secretary. We presume that this provision, taken with the sentence in section 2 of the bill directing that the Secretary accept the highest bid from a responsible qualified bidder equal to or greater than the minimum acceptable prices, means that no tract evaluation would be conducted in order to accept the high bid. However, we recommend that this point be clarified in the bill.

Section 2 provides a 1-year period within which a person could apply for a lease on lands receiving no bids or bids below the per-acre bid price. We believe a 3-year period would be more appropriate. This would ease the administrative burden in recycling such tracts.

Section 3 would allow the Secretary to disapprove assignments if they involve a separate zone or deposit, a part of a legal subdivision, or are less than 640 acres outside Alaska, or less than 2,560 acres in Alaska. It would require that assignments be processed promptly. Section 3 also refers to subleases. This section is aimed at preventing the "40 acre" merchant from leasing large tracts of land and then breaking that lease into many small parts which can be marketed to an unsuspecting public. We favor this amendment but recommend that all references to subleases in this section of the Mineral Leasing Act be deleted inasmuch as such agreements usually involve the Government as a third party and little, if any, public purpose is served through approval of assignments of operating rights associated with subleases.

Section 6 would "grandfather" lease applications pending at the time S. 66 is enacted. In addition to lease applications being grandfathered, we believe that lands which are currently available for noncompetitive leasing but which have attracted no leasing interest should remain available for leasing under section 17(c) of the Mineral Leasing Act until January 1, 1991. In order to define the category of lands in which there is no leasing interest, we would exclude lands which were subject to a lease or lease application on January 1,

1987. This would enable BLM to identify lands on which there is no leasing interest by posting for simultaneous filings all lands covered by a lease which had terminated, expired or been canceled prior to that date and received no applications. If land is managed by another agency such as the United States Forest Service, BLM refers previously leased land to that agency for review before posting it for simultaneous filings. We would exclude land which has been referred but received no response. This will avoid the possibility that there is no pending application on lands with leasing interest only because they are under review by a surface managing agency other than BLM. Finally, we would exclude all land under study for inclusion in a KGS, or, in Alaska, in a favorable petroleum geological province, and all land in Arkansas.

This would give the oil industry adequate time to adjust to the new leasing system. It would encourage companies to continue their wildcat efforts on lands where there is no other current interest. The proposal should not alter the basic change contemplated by S. 66 since the lands affected by our proposal are not expected to attract the minimum bid.

Section 7 would require issuance of regulations within 180 days of enactment of S. 66 and would require the Secretary to hold at least one lease sale under the provisions of the bill without having issued regulations. In order to meet the 180-day requirement for issuing final regulations, several steps in the regulatory process would have to be shortened or eliminated. The time

limit should be changed to at least 270 days because 180 days is not sufficient time within which to issue regulations. The requirement to hold at least one lease sale prior to issuance of the regulations may be too rigid. We believe that until new regulations are in place, the Secretary should have discretion either to maintain the status quo leasing system based on KGS status or to hold a sale under the system envisioned by S. 66. In any event, the opportunity for leasing should not be stopped while regulations are being prepared.

Section 9 would establish civil and criminal penalties for misrepresentations to the public concerning oil and gas leasing. Section 9(c) would require the Attorney General to initiate certain civil actions against persons who know or should have known they were in violation of subsections (a) or (b) of section 9. We understand the Department of Justice has concerns that subsection (c) will limit prosecutorial discretion.

The section immediately following section 9 in S. 66 is also identified as section 9. As a technical matter, the sections should be renumbered at this point, with each section renumbered one number higher.

We believe the second section 9, as it appears on page 13 of S. 66, should be deleted. S. 66 would not allow any payments to the States under section 35 of the Mineral Leasing Act to be reduced by any administrative or other costs incurred by the United States. We strongly support a more equitable distribution of mineral receipts, recognizing the expenses incurred by the

Federal Government in managing minerals on Federal lands. We believe the Federal Government should be reimbursed for the costs it incurs in managing Federal minerals, before making distribution of the receipts, thereby assuring more equitable sharing of the burdens as well as the benefits of administering Federal minerals.

Section 10 of S. 66 would require the Secretary to submit to Congress an annual report dealing with onshore oil and gas leasing. We believe that the requirement for submission of such a report within 1 year does not allow sufficient time to prepare a quality report. A single report prepared and submitted within 3 years of enactment of S. 66 would be preferable. The report should be limited to:

(1) The number of acres leased and the number of leases issued;

(2) The amount of revenue received from bonus bids, rentals and royalties; and

(3) The amount of production before and after enactment of S. 66.

We also believe that the report should be prepared once, not annually. Most of the information is available in the Public Land Statistics and Royalties: A Report of Federal and Indian Mineral Reserves. We see no need to add another annual report to the many we prepare every year, when much of the information is readily available. In addition, the Department is always

willing to respond at any time to congressional requests for additional information relative to the operation of our onshore oil and gas leasing system.

Finally, we recommend that S. 66 be amended to add a provision relating to interests in lands which will vest in the Federal Government at some future time.

Beginning in the 1930's, the United States obtained lands under statutes such as the Bankhead-Jones Act and the Weeks Act. In many cases, the Federal Government acquired the surface outright but acquired only a future interest in the minerals. Until the vesting of the minerals in the United States--anywhere from 25 to 50 years after acquisition--the grantees of these lands had fee ownership of the minerals, including the right to lease and develop them. Because centralized records were not kept of these conveyances, we do not know how many of the lands contain the future Federal mineral interest. We do know that there are cases where the current owners of these interests have leased them to third parties.

Under current law and regulation, a lease on a future interest that is not located in a KGS may be issued directly to the current owner of mineral rights either as an operator holding such rights or as mineral fee owner. However, future interest leases for lands which are located in a KGS must, under current statute, be leased under a competitive bidding system. Therefore, it is possible that the current owner or operator may lose his present rights or,

at the least, have to pay for the mineral interest again. The possibility also exists for interrupted production if the current owner/operator loses his mineral interest.

We suggest that language be adopted to allow the Secretary to issue a lease without competitive bidding to any person who is operating a producing well at the time of lease issuance and, under assurance satisfactory to the Secretary, will continue to be operating the producing well at the time the future interest vests in the United States. The proposed amendment would be in the interest of equity to the current owner/operator and would assure continuation of production.

We favor the enactment of S. 66 with the amendments suggested and strongly urge positive congressional action on it.

S. 1388 is similar to S. 66 in several respects. It includes the provisions for criminal and civil penalties for persons and/or corporations who misrepresent values of lease or lands or the ability to obtain leases; gives the Secretary authority to disapprove assignments or subleases; and provides that section 102(2)(C) of the National Environmental Policy Act of 1969 shall not apply to actions taken by the Secretary to develop an oil and gas leasing program or to hold individual oil and gas lease sales.

More specifically, section 2(a) of S. 1388 would amend section 17(b)(1) of the Mineral Leasing Act to provide that all lands, except those available for

over-the-counter leasing on the date of enactment, shall be leased by competitive bidding. This provision differs from S. 66 in that it provides for exemption from competitive leasing for an unlimited period of time for all lands which at the time of enactment are available for over-the-counter leasing. Correspondingly, there is no provision to exempt, for a period of time, a lease already exposed to competition.

The exemption from competition of current OTC lands and lands which fail to receive bids of $1 per acre until they are once again leased noncompetitively may create problems for this system in the future. Because the oil market is currently depressed, we can expect many lands to fail to receive the $1 bid. More than half of current SIMO lands do not receive a single application. As lands become more valuable as the oil market rebounds, there will be no opportunity to share in the increased values. It is likely that these lands will be assigned for more than $1 per acre. When this happens, there will be pressure to eliminate the OTC exemption, resulting in an all-competitive leasing program with no noncompetitive fallback. Furthermore, land values in the oil patch do not move smoothly and continuously from zero to $1 per acre to higher values but tend to jump around as interest in an area waxes or wanes. It is likely that some lands which can be obtained cheaply through the OTC exemption will be assigned for values above $1 per acre in these circumstances as well. We prefer the approach reflected in the provisions of S. 66.

S. 1388 also differs from S. 66 in that in conjunction with section 17(b)(1) it would amend section 17(c) of the Mineral Leasing Act to provide that lands which receive either no bids or bids below the $1 minimum shall be available for noncompetitive leasing indefinitely, rather than for a specified period of time. Again, we prefer the provisions of S. 66 but that the period of time should be set at 3 years. The low $1 minimum bid likely will eliminate the need for a computerized simultaneous leasing although some instances will arise where selection among OTC applicants will need to be made. This could result in a process which we expect will prove to be a great administrative burden.

As we have stated before, no system can be guaranteed to be free of fraudulent abuse. The fraud provisions of both S. 66 and S. 1388 could go a long way toward preventing such abuse. However, the Department of Justice is still reviewing these provisions to insure they will be adequate and may comment further on this issue directly to the Committee. Nevertheless, we believe the higher $20 per acre minimum in S. 66 has certain advantages in this regard relative to the $1 per acre minimum in S. 1388.

The $1 per acre minimum bid makes it very easy for less than forthright individuals to obtain considerable amounts of land cheaply. They can then advertise this land as competitively won and assign 640 acre sections at $5 and $10 per acre without resorting to any fraudulent claims or smaller acreages. Their ability to obtain the land necessitates their beginning the bidding at $1 and dropping out whenever anyone raises their bid. Since many

lands do not now warrant $1 per acre as evidenced by the large number of SIMO tracts receiving no applications, they should have little trouble amassing a sufficient land base to undertake such a venture (one which should not trigger the fraud or "40 acre" merchant provisions of the bill).

We also have some technical concerns with S. 1388 but believe these can all be corrected.

1. Use of availability for leasing under Subpart 3111 of 43 CFR on the date of enactment maintains the need for KGSs and FPGPs since these lands must be noncompetitively available and to be so must meet the general requirements for noncompetitive leases stated in Subpart 3110 which requires the land to be outside a known geological structure of a producing oil or gas field or a favorable petroleum geological province in Alaska. We believe one of the purposes of S. 1388 is to eliminate the need for a KGS or FPGP. This goal could be accomplished by adding language to clarify that if lands are not in or under study for inclusion in a KGS or FPGP on the date of enactment then noncompetitive leases should be issued if all other requirements are satisfied.

2. We would note the stated $1 per acre minimum bid may not be sufficient to cover the administrative costs of the sales. In Wyoming BLM uses $5 per acre for its KGS sales currently.

3. Setting the rental rate for all leases at $1 per acre takes away the current flexibility afforded by "no less than $.50". The minimum royalty set

at $1 per acre, while consistent with the overall rental rate, is counter the GAO and Department's attempts to gain some flexibility with respect to the minimum royalty by supporting "no less than $1 per acre".

4. The grandfather conditions in section 5, as currently written, would require continued KGS and FPGP classifications. It should be made consistent with our first technical comment. Additionally, there is no specific exemption for Fort Chaffee, Eglin A.F.B. and other areas we believe need to be competitively tested.

5. The bill fails to amend section 188 of the Mineral Leasing Act to eliminate a phrase dealing with cancellation of leases. This phrase has been interpreted to mean that if a lease is in a KGS it cannot be cancelled by the Secretary. Because this implies KGS's need to be maintained, that provision is inconsistent with the intent of the amendments contained in S. 1388. Section 4 of S. 66 addresses this issue and should be added to S. 1388 to correct this.

6. Section 2(b) of H.R. 1388 would also amend section 17(c) of the Mineral Leasing Act to provide that lands in leases, except those previously issued noncompetitively which terminate, expire, are cancelled or relinquished, shall be available for competitive leasing within 90 days. We object to any legislated timeframe for offering lands for competitive leasing since there may be circumstances beyond the control of the Secretary which make it impossible to meet the fixed deadline. We suggest the phrase "to the extent practicable" be added.

In summary, we support enactment of S. 66 with the improvements suggested herein, and do not favor enactment of S. 1388.

This concludes my statement. I will be pleased to respond to any questions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law made by the legislation as reported (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

ACT OF FEBRUARY 25, 1920

(41 Stat. 437, as amended)

SEC. 17. (a)*(1)* All lands subject to disposition under this Act which are known or believed to contain oil or gas deposits may be leased by the Secretary[.]*: Provided, however, That the Secretary of the Interior may not issue any oil and gas lease under this Act on any lands administered by the Secretary of Agriculture through the Forest Service, without consultation with the Secretary of Agriculture.*

(2) The Secretary shall not issue a lease or leases or approve the assignment of any lease or leases under the terms of this section to any person, association, corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation, where any such entity has failed to reclaim a lease tract as required by the terms and conditions of the lease.

(b) [(1) If the lands to be leased are within any known geological structure of a production oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than six hundred and forty acres, which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary and of such royalty as may be fixed in the lease, which shall be not less than 12½ per centum in amount or value of the production removed or sold from the lease.] *(1) All lands to be leased which are not subject to leasing under paragraph (2) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than two thousand five hundred and sixty acres, except in Alaska, where units shall be not more than five thousand one hundred and twenty acres, which shall be as nearly compact as possible. Lease sales shall be conducted by oral bidding. Lease sales shall be held for each State where eligible lands are available at least every two months, and more frequently if the Secretary determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty of 12.5 per centum in amount or value of the production removed or sold from the lease. The Secretary shall establish by regulation a national minimum acceptable price for all leases which is at least $10 per acre. The Secretary shall accept the highest bid from a responsible qualified bidder which is equal to or greater than the minimum acceptable price, without evaluation of the value of the lands proposed for lease. Leases shall be issued within sixty days following payment by the successful bidder of the remainder of the bonus bid, if*

any, and the annual rental for the first lease year. All bids for less than the minimum acceptable price shall be rejected. Lands for which no bids are received or for which the highest bid is less than the minimum acceptable price shall be offered promptly within 30 days for leasing under subsection (c) of this action and shall remain available for leasing for a period set by the Secretary not to exceed three years after the competitive lease sale.

(c) [If the lands to be leased are not subject to leasing under subsection (b) of this section, the person first making application for the lease who is qualified to hold a lease under this chapter shall be entitled to a lease of such lands without competitive bidding.] *(1) If the lands to be leased are not leased under section (b)(1) of this section or are not subject to competitive leasing under section (b)(2) of this section, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding. Lands to be leased under this subsection shall be made available at least every two months. Leases shall be issued within sixty days of the date on which the Secretary identifies the first qualified applicant.* Such leases shall be conditioned upon the payment by the lessee of a royalty of 12½ per centum in amount or value of the production removed or sold from the lease.

(2)(A) Lands (i) which were posted for sale under paragraph (b)(1) of this section but for which no bids were received or for which the highest bid was less than the minimum acceptable price established by the Secretary and (ii) for which, at the end of the period prescribed by the Secretary under paragraph (b)(1) of this section no lease has been issued and no lease application is pending under paragraph (1) of this subsection, shall again be available for leasing only in accordance with paragraph (b)(1) of this section.

(B) The land in any lease which is issued under paragraph (1) of this subsection or under paragraph (b)(1) of this section which lease terminates, expires, is canceled or is relinquished shall again be available for leasing only in accordance with paragraph (b)(1) of this section.

(d) [All leases issued under this section shall be conditioned upon payment by the lessee of a rental of not less than 50 cents per acre for each year of the lease. Each year's lease rental shall be paid in advance. A minimum royalty of $1 per acre in lieu of rental shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased.] *All leases under this section shall be conditioned upon payment by the lessee of a rental of not less than $1 per acre for each year of the lease. Each year's lease rental shall be paid in advance. A minimum royalty of not less than $1 per acre in lieu of rental shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gass in paying quantities on the lands leased, except that no minimum royalty shall exceed the rental rate that would have applied before discovery.*

(e)*(1)* Competitive leases issued under this section shall be for a primary term of five years and noncompetitive leases for a primary term of ten years: *Provided, however,* That competitive leases issued in special tar sand areas shall also be for a primary term of ten years. Each such lease shall continue so long after its primary

term as oil or gas is produced in paying quantities. Any lease issued under this section for land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities.

(2) In addition to the authority granted to the Secretary under Section 39 of this Act (30 U.S.C. 209), where a lessee is denied access for operations involving exploration, drilling or production on a valid lease due to prolonged environmental or other analyses, unresolved litigation, or other delays which are beyond the control of the lessee and which continue beyond 90 days after receipt by the Secretary of a written request by the lessee for access to the leasehold for such purposes, the Secretary is authorized to suspend the lease, and the term of such lease shall be extended by adding any such suspension period thereto.

SEC. 30. (a) Notwithstanding anything to the contrary in section 30 hereof, any oil or gas lease issued under the authority of this Act may be assigned or subleased, as to all or part of the acreage included therein, subject to final approval by the Secretary and as to either a divided or undivided interest therein, to any person or persons qualified to own a lease under this Act, and any assignment or sublease shall take effect as of the first day of the lease month following the date of filing in the proper land office of three original executed counterparts thereof, together with any required bond and proof of the qualification under this Act of the assignee or sublessee to take or hold such lease or interest therein. Until such approval, however, the assignor or sublessor and his surety shall continue to be responsible for performance of any and all obligations as if no assignment or sublease had been executed.

[The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: *Provided, however,* That the Secretary may, in his discretion, disapprove an assignment of a separate zone or deposit under any lease, or of a part of a legal subdivision.]

The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: Provided, however, That the Secretary may, in his discretion, disapprove an assignment—(1) of a separate zone or deposit under any lease, (2) of a part of a legal subdivision, or (3) of less than six hundred and forty acres outside Alaska or of less than two thousand five hundred and sixty acres within Alaska, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas. Requests for approval of assignment or sublease shall be processed promptly by the Secretary. Except where the assignment or sublease is not in accordance with applicable law, the approval shall be given within sixty days of the date of receipt by the Secretary of a request for such approval.

Upon approval of any assignment or sublease, the assignee or sublessee shall be bounded by the erms of the lease to the same extent as if such assignee or sublessee were the original lessee, any conditions in the assignment or sublease to the contrary notwithstanding. Any partial assignment of any lease shall segregate the

assigned and retained portions thereof, and as above provided, release and discharge the assignor from all obligations thereafter accruing with respect to the assigned lands; and such leases shall continue in full force and effect for the primary term of the original lease, but for not less than two years after the date of discovery of oil and gas in paying quantities upon any other segregated portion of the lands originally subject to such lease. Assignments under this section may also be made of parts of leases which are in their extended term because of any provision of this Act. Upon the segregation by an assignment of a lease issued after the effective date of the Mineral Leasing Act Revision of 1960 and held beyond its primary term by production, actual or suspended, or the payment of compensatory royalty, the segregated lease of any undeveloped, assigned, or retained part shall continue for two years, and so long thereafter as oil or gas is produced in paying quantities.

SEC. 31. (a) * * *

(b) [Any lease issued after August 21, 1935, under the provisions of section 17 of this Act shall be subject to cancellation by the Secretary of the Interior after thirty days' notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas.] *Any lease issued after August 21, 1935, under the provisions of section 17 of this Act shall be subject to cancellation by the Secretary of the Interior after thirty days notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the leasehold contains a well capable of production of oil or gas in paying quantities, or the lease is committed to an approved cooperative or unit plan or communitization agreement under section 17(j) of this Act which contains a well capable of production of unitized substances in paying quantities.* Such notice in advance of cancellation shall be sent the lease owner by registered letter directed to the lease owner's record postoffice address, and in case such letter shall be returned as undelivered, such notice shall also be posted for a period of thirty days in the United States land office for the district in which the land covered by such lease is situated, or in the event that there is no district land office for such district, then in the post office nearest such land. Notwithstanding the provisions of this section, however, upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law: *Provided, however,* That when the time for payment falls upon any day in which the proper office for payment is not open, payment may be received the next official working day and shall be considered as timely made: *Provided,* That if the rental payment due under a lease is paid on or before the anniversary date but either (1) the amount of the payment has been or is hereafter deficient and the deficiency is nominal, as determined by the Secretary by regulation, or (2) the payment was calculated in accordance with the acreage figure stated in the lease, or in any decision affecting the lease, or made in accordance with a bill or decision which has been rendered by him and such figure, bill, or decision is found to be in error resulting in a deficiency, such lease shall not automatically terminate unless (1) a

new lease had been issued prior to the date of this Act, or (2) the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent to him by the Secretary.

SEC. 35. All money received from sales, bonuses, royalties including interest charged collected under the Federal Oil and Gas Royalty Management Act of 1982, and rentals of the public lands under the provisions of this Act and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof, shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided,* That all moneys which may accrue to the United States under the provisions of this Act and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this Act and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.

In determining the amount of payments to states under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States.

SEC. 41. (a) Any person shall be liable under the standards set forth in subsections (c) and (d) of this section if that person misrepresents to the public, by any means of communication, the following:

(1) The value or potential value of any lease or portion thereof issued under this Act;

(2) the value or potential value of any lease or portion thereof to be issued under this Act;

(3) the value or potential value of any land available for leasing under this Act;

(4) the availability of any land for leasing under this Act;

(5) the ability of the person to obtain leases under this Act on his or her own behalf or on behalf of any other person; or

(6) the provisions of this Act and its implementing regulations.

(b) Any person who organizes, or participates in, any scheme, arrangement, plan, or agreement to circumvent the provisions of this Act or its implementing regulations shall be liable under the provisions of this section.

(c) The Attorney General shall institute against any person who, given the nature of the intended recipient of the communication, knew or should have known he or she was violating subsection (a) or (b) of this section, a civil action, in the district court of the United States for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than $100,000 for each violation, or other appropriate remedy, including but not limited to, a prohibition from participation in exploration, leasing, or development of any federal mineral, or both.

(d) Any person who knowingly and willfully violates the provisions of this section shall, upon conviction, be punished by a fine of not more than $500,000 for each violation or by imprisonment for not more than five years, or both.

(e)(1) Whenever a corporation or other entity is subject to civil or criminal action under this section, any officer, employee, or agent of such corporation or entity who authorized, ordered, or carried out the proscribed activity shall be subject to the same action.

(2) Whenever any officer, employee, or agent of a corporation or other entity is subject to civil or criminal action under this section for activity conducted on behalf of the corporation or other entity, the corporation or other entity shall be subject to the same action, unless it is shown that the officer, employee, or agent was acting without the knowledge or consent of the corporation of other entity.

(f) The remedies, penalties, fines, and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies, penalties, fines, and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines and imprisonment afforded by any other law or regulation.

(g)(1) A state may commence a civil action under subsection (c) of this section against any person conducting activity within the state in violation of this section. Civil actions brought by a state shall only be brought in the United States district court for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order appropriate remedies and penalties as described in subsection (c) of this section.

(2) The state shall notify the Attorney General of the United States of any civil action filed by the State under this subsection within thirty days of filing of the action.

(3) Any civil penalties recovered by a state under this subsection shall be retained by the state and may be expended in such manner and for such purposes as the state deems appropriate. If a civil action is jointly brought by the Attorney General and a state, by more than one state or by the Attorney General and more than one state, any civil penalties recovered as a result of joint action shall be shared by the parties bringing the action in accordance with a written agreement entered into prior to the filing of the action.

(4) Nothing in this section shall deprive a state of jurisdiction to enforce its own civil and criminal laws against any person who may also be subject to civil and criminal action under this section.".

SEC. 43. Actions taken by the Secretary of the Interior to develop regulations and procedures for a competitive oil and gas leasing program or to hold particular lease sales shall not be subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969. Except as otherwise provided in this section, nothing in this Act shall be considered as affecting the application of section 102 of the National Environmental Policy Act of 1969.

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

(Pub. L. 96-487, 94 Stat. 2371)

SEC. 1008. (a) The Secretary shall establish, pursuant to the Mineral Leasing Act of 1920, as amended, an oil and gas leasing program on the Federal lands of Alaska not subject to the study required by Section 1001 of this Act, other than lands included in the National Petroleum Reserve—Alaska. Such program shall not be undertaken by the Secretary on those lands where applicable law prohibits such leasing or on those units of the National Wildlife Refuge System where the Secretary determines, after having considered the national interest in producing oil and gas from such lands, that the exploration for and development of oil or gas would be incompatible with the purpose of which such unit was established.

(b)(1)(A) In such areas as the Secretary deems favorable for the discovery of oil or gas, he shall conduct a study, or studies, or collect and analyze information obtained by permittees authorized to conduct studies under this section, of the oil and gas potential of such lands and those environmental characteristics and wildlife resources which would be affected by the exploration for and development of such oil and gas.

(B) The Secretary is authorized to issue permits for study, including geological, geophysical, and other assessment activities, if such activities can be conducted in a manner which is consistent with the purposes for which each affected area is managed under applicable law.

(2) The Secretary shall consult with the Secretary of Energy regarding the national interest involved in exploring for and developing oil and gas from such lands and shall seek the views of the Governor of the State of Alaska, Alaskan local governments, Native Regional and Village Corporations, the Alaska Land Use Council, representatives of the oil and gas industry, conservation groups, and other interested groups and individuals in determining

which land should be studied and/or leased for the exploration and development of oil and gas.

(3) The Secretary shall encourage the State to undertake similar studies on lands associated, either through geological or other land values or because of possible transportation needs, with Federal lands. The Secretary shall integrate these studies, to the maximum extent practicable, with studies on Federal lands so that needs for cooperation between the Federal Government and the State of Alaska in managing energy and other natural resources, including fish and wildlife, can be established early in the program.

(4) The Secretary shall report to the Congress by October 1, 1981, and yearly thereafter, on his efforts pursuant to this Act regarding the leasing of, and exploration and development activities on, such lands.

[(c) At such time as the studies requested in subsection (b)(4) of this section are completed by the Secretary, or at such time as the Secretary determines that sufficient interest has been indicated in exploring an area for oil or gas, and leasing should be commenced, he shall identify those areas which he determines to be favorable for the discovery of oil or gas (hereinafter referred to as "favorable petroleum geological provinces"). In making such determination, the Secretary shall utilize all information obtained in studies conducted under subsection (b) of this section as well as any other information he may develop or require by regulation to be transmitted.]

[(d)] *(c)* Pursuant to the Mineral Leasing Act of 1920, as amended, the Secretary is authorized to issue leases, on the Federal lands described in this section, under such terms and conditions as he may, by regulation, prescribe. [Areas which are determined by the Secretary to be within favorable petroleum geological provinces shall be leased only by competitive bidding.]

[(e) At such time as paying quantities of oil or gas are discovered under a noncompetitive lease issued pursuant to the Mineral Leasing Act of 1920, the Secretary shall suspend all further noncompetitive leasing in the area and shall determine the favorable petroleum geological province in proximity to such discovery. All further leasing in such area shall be in accordance with the requirements of subsection (d) of this section.]

[(f)] *(d)* Prior to any exploration activities on a lease issued pursuant to this section, the Secretary shall require the lessee to describe exploration activities in an exploration plan. He shall approve such plan if such activities can be conducted in conformity with such requirements as may be made by the Secretary for the protection and use of the land for the purpose for which it is managed under applicable law.

[(g)] *(e)* Subsequent to discovery of oil and gas in paying quantities, and prior to developing and producing such oil and gas, the Secretary shall require the lessee to describe development and production activities in a development and production plan. He shall approve such plan if such activities may be conducted in conformity with such requirements as may be made by the Secretary for the protection and use of the land for the purpose for which it is managed under applicable law.

[(h)] *(f)* The Secretary shall monitor the performance of the lessee and, if he determines that due to significant changes in circumstances regarding that operation, including environmental or economic changes, new requirements are needed, he may require a revised development and production plan.

[(i)] *(g)* If the Secretary determines that immediate and irreparable damage will result from continuation in force of a lease, that the threat will not disappear and that the advantages of cancellation outweigh the advantages of continuation in force of a lease, he shall suspend operations for up to five years. If such a threat persists beyond such five-year suspension period, he shall cancel a lease and provide compensation to the lease under such terms as the Secretary establishes, by regulation, to be appropriate.

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